



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,448	07/05/2001	Patrick J. Treacy	ST-004	4093

530 7590 08/13/2003

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 08/13/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

09/899,448

Applicant(s)

TREACY ET AL.

Examiner

Javier G. Blanco

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 17-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,7,9. 6) ☐ Other:

Art Unit: 3738

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Invention I (Claims 1-16) in Paper No. 12 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 17-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 12.

Drawings

3. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3738

5. Claims 1-6, 9, 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Capello et al. (US 5,702,477 A; cited in Applicants' IDS). As seen in Figures 1-3, Capello et al. disclose a pelvic prosthesis comprising a ball socket (acetabular shell 20), an anterior fanned wing (anchoring plate 40) extending upward from said ball socket, and a posterior fanned wing (securing hook 50) extending upward from said ball socket and spaced apart from said anterior fanned wing (see entire document).

6. Claims 1-7, 9-11, and 13-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sanders et al. (US 5,871,548 A). As seen in Figures 1, 3, 5, and 6, Sanders et al. disclose a pelvic prosthesis comprising a ball socket (reinforcement body 12), an anterior fanned wing (fixation wing 20) extending upward (see Figure 5) from said ball socket, a posterior fanned wing (opposite fixation wing 20) extending upward (see Figure 5) from said ball socket and spaced apart from said anterior fanned wing (see entire document). A stabilizing hump (flange 18 or rim 16) extends between opposite fanned wings. Fanned wings comprise countersink holes 29.

7. Claims 1-7, 9-12, and 14 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by White et al. (US 6,416,553 B1). As seen in Figures 1-4 and 25, White et al. disclose a pelvic prosthesis comprising a ball socket (acetabular cup 350), an anterior fanned wing (flange 410) extending upward, and a posterior fanned wing (hook 426) extending upward and spaced apart from the anterior fanned wing (see entire document).

Art Unit: 3738

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capello et al. (US 5,702,477 A; cited in Applicants' IDS) in view of Nieder et al. (US 5,030,238 A; cited in Applicants' IDS). Capello et al. disclose the claimed pelvic prosthesis (see 102(b) rejection above) except for disclosing an extension device for interconnecting the pelvic prosthesis with a femoral component. However, said extension device is well known in the art. For example, Nieder et al. disclose an extension device (intermediate portion 3) for interconnecting a pelvic prosthesis (saddle-like head 1) with a femoral component (shank 2). Nieder et al. is evidence of the use of extension devices to connect a pelvic prosthesis to a femoral component. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teaching of using an extension device, as taught by Nieder et al., with the pelvic prosthesis of Capello et al., in order to connect the pelvic prosthesis to a femoral component.

Allowable Subject Matter

10. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3738

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Cuckler et al. (US 5,931,870 A), Gustillo et al. (US 6,162,257 A), Gibbs et al. (US 6,458,161 B1), and Duliere (FR 2 689 000 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:00-4:30), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Javier G. Blanco
August 8, 2003



David H. Willse
Primary Examiner